IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 194 of 2005.

Date of decision: 20.12.2005.

Sharda ... Petitioner

Versus

Shangri & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr. N.S. Shandil, Advocate.

For the respondents: Mr. Ajay Kumar, Advocate.

V.M. Jain, J. (Oral):

This petition under Article 227 of the Constitution of India has been filed by the plaintiff – petitioner, challenging the order dated 3.8.2005 passed by the trial Court, dismissing the application of the plaintiff – petitioner under Order 6 Rule 17 C.P.C., seeking amendment of the plaint.

The facts which are relevant for the decision of the present petition are that the plaintiff had filed a suit for permanent prohibitory injunction against the defendants. During the pendency of the suit, the plaintiff had filed an application under Order 6 Rule 17 C.P.C. seeking to amend the plaint so as to changing the title of the suit by incorporating word "possession" instead of the words "permanent prohibitory

[1]Whether reporters of Local Papers may be allowed to see the judgment?

injunction". It was alleged in the application that on 13.8.2004, the possession of the suit land was taken from the plaintiff – petitioner under the orders of the Court, in the case Smt. Shangri Vs. Smt. Sharda and hence, the necessity arose for seeking a decree for possession in respect of the suit land. The said application was contested by the defendants by taking up various preliminary objections and alleging therein that the earlier suit for possession was decreed in favour of the present defendant No.1 by the trial Court on 15.3.1996 and the said decree was upheld by the appellate Courts on 2.8.1999, 30.7.2003 and 26.3.2004 respectively and thereafter, the plaintiff had filed the present suit for declaration, between the same parties and the same was not maintainable. After hearing both sides and perusing the record, the learned trial Court dismissed the amendment application of the plaintiff under Order 6 Rule 17 C.P.C. vide order dated 3.8.2005. Aggrieved against the same, plaintiff – petitioner filed the present petition under Article 227 of the Constitution of India in this Court.

Notice of the petition was ordered to be issued to the defendants – respondents and the record of the case was also requisitioned. When the petition came up for hearing before me on 28.10.2005, in the presence of the counsel for both the parties, the learned counsel appearing for the defendants – respondents submitted before me that what to talk of the plaintiff – petitioner being allowed to seek amendment of the plaint, even the suit filed by the plaintiff – petitioner before the trial Court was not maintainable, inasmuch as the previous suit filed by the present defendant – respondent No.1 for possession, on the basis of the title etc., had been decreed in her favour upto the Hon'ble Supreme Court and it was thereafter that the plaintiff,

against whom the previous suit was decreed, had filed the present suit, seeking a decree for declaration and permanent prohibitory injunction to the effect that the judgment and decree dated 15.3.1996 passed by the trial Court and affirmed by the learned District Judge, by this Court and by the Hon'ble Supreme Court were vitiated by fraud and misrepresentation and the same be declared as illegal and void and not binding on the rights of the plaintiff. It was further submitted that the present suit filed by the plaintiff was not maintainable and was an abuse of the process of law. It was further submitted that during pendency of the present suit, the present defendants – respondents had taken possession of the suit property in execution of the decree passed in their favour in the previous suit after the objections filed by the present plaintiff – petitioner had been dismissed by the Executing Court and upheld upto this Court. It was further submitted that after the possession was taken by the present defendants – respondents, in execution of the earlier decree passed in their favour, the present plaintiff – petitioner had filed the present application under Order 6 Rule 17 C.P.C. in the present suit, seeking amendment of the plaint, so as to claim a decree for possession and that this application was dismissed by the trial Court by the impugned order and against the dismissal of the same, the plaintiff – petitioner had filed the present petition under Article 227 of the Constitution of India.

After hearing the learned counsel for the parties and perusing the record, prima facie, I was of the opinion that filing of the present suit by the plaintiff - petitioner was an abuse of the process of law and that it was a fit case where this Court may exercise suo motu powers under Article 227 of the Constitution of India and order the

quashment of the suit (plaint) itself. Before taking any further action in the matter, it was considered appropriate to call upon the plaintiff – petitioner to show cause as to why this Court may not exercise the powers under Article 227 of the Constitution of India suo motu and after perusing the record may not quash the suit (plaint) filed by the plaintiff, being an abuse of the process of law. At the request made by the learned counsel appearing for the plaintiff – petitioner, to seek instructions and to make submissions, the case was adjourned to 10.11.2005, on which date, it was adjourned to 1.12.2005, at the request of the counsel for the plaintiff – petitioner. On 1.12.2005, the learned counsel appearing for the petitioner had filed reply to the show cause notice and the case was adjourned to 20.12.2005 i.e. today, for consideration.

I have heard the learned counsel for the parties, in the petition under Article 227 of the Constitution of India and also with regard to the suo motu exercise of powers under Article 227 of the Constitution of India for the purpose of considering the question as to whether the suit (plaint) filed by the plaintiff be not quashed, being an abuse of the process of law and have perused the record.

The learned counsel appearing for the plaintiff - petitioner submitted before me that since the orders passed by the various Courts in the previous suit were illegal and void, the plaintiff – petitioner had rightly filed the present suit for declaration, for getting the various judgments, orders and decrees passed in the previous suit declared as illegal and void and no case for quashment of the suit (plaint) was made out. He has further submitted that the plaintiff was entitled to the amendment of the plaint so as to seek relief of possession, since he was dispossessed during the pendency of the suit. On the other, the learned

counsel appearing for the defendants – respondents submitted before me that in the previous suit for possession filed by the present defendant No.1 on the basis of title, decree for possession was passed in favour of the defendant No.1 and the same was upheld in appeal by the learned District Judge, by this Court and by the Hon'ble Supreme Court, vide orders dated 2.8.1999, 30.7.2003 and 26.7.2004 and it was thereafter that the present plaintiff had filed the suit for declaration challenging the legality of these judgments/orders and decrees.

As referred to above, present defendant No.1 had filed a suit for possession on the basis of title against the present plaintiff. The said suit was decreed in her favour trial Court on 15.3.1996 and a decree for possession was passed in favour of present defendant No.1. The appeal filed by the present plaintiff was dismissed by the learned District Judge on 2.8.1999 and the Regular Second Appeal filed by her was also dismissed by this Court, vide detailed judgment and decree dated 30.7.2003 and the Special Leave Petition filed by the present plaintiff was dismissed by the Hon'ble Supreme Court, vide order dated 26.3.2004. After the dismissal of the Special Leave Petition by the Hon'ble Supreme Court, the present plaintiff filed the present suit before the trial Court on 25.5.2004, seeking a declaration that the various judgments/orders and decrees passed by the trial Court and the appellate Courts be declared illegal and void. Since the suit of present defendant No.1 for possession had been decreed by the trial Court and the said decree was upheld in appeals by the various appellate Courts, present defendant No.1 had filed execution petition before the Execution Court. It is not disputed before me that the present plaintiff had filed objections in the said execution petition, which were dismissed and the said order was upheld in the revision

petition, by this Court. Thereafter, in execution of the decree passed in the previous suit, the possession of the suit land was delivered to present defendant No.1, under the orders of the Executing Court. It was thereafter that the present plaintiff filed the application under Order 6 Rule 17 C.P.C., for the amendment of the plaint, so as to seek the decree for possession, instead of permanent injunction, since the plaintiff had been dispossessed from the suit land during the pendency of the suit.

From a perusal of the above facts, in my opinion, it would be clear that the filing of the present suit by the plaintiff – petitioner is an abuse of the process of law and suo motu exercising the powers under Article 227 of the Constitution of India, in my opinion, it is a fit case where the suit (plaint) filed by the present plaintiff be quashed, considering that in the present suit, the plaintiff is seeking a declaration that the judgments and decrees passed by the various Courts upto Hon'ble Supreme Court, in the previous litigation between the parties, be declared illegal and void.

In **T. Arivandandam Vs. T.V. Satyapal and another, AIR 1977 Supreme Court 2421**, it was held by the Hon'ble Supreme Court that the suit filed by the plaintiff was a flagrant misuse of the mercies of the law in receiving plaints. It was found that the plaintiff had filed a suit for declaration that the order of eviction which had been confirmed right upto the High Court and resisted by the other side throughout was obtained by fraud and collusion and he sought an injunction against the execution of the eviction order. In the said litigation, some more time was given to the plaintiff to vacate the premises. In the mean while, the plaintiff filed another suit which was the carbon copy of the previous suit, seeking grant of ex parte injunction. It

was under those circumstances, when the matter came up for consideration before the Hon'ble Supreme Court, the Hon'ble Supreme Court held that the suit filed by the plaintiff was a flagrant misuse of mercies of law in receiving the plaints. It was further held that the suit had no survival value and was liable to be disposed of forthwith.

In **Hira Lal Mool Chand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by LRs., (1993) 2 Supreme Court Cases 458**, it was held by the Hon'ble Supreme Court that a decree is said to be a nullity if it is passed by a Court having no inherent jurisdiction. It was further held that merely because a court erroneously passes a decree or there is an error while passing the decree, the decree cannot be called a nullity. It was further held that the decree to be called a nullity is to be understood in the sense that it is ultra vires the powers of the Court passing the decree and not merely voidable decree.

In **Rafique Bibi (Dead) by LRs Vs. Sayed Waliuddin (Dead) by LRs. and others, (2004) 1 Supreme Court Cases 287,** again it was held by the Hon'ble Supreme Court that a decree can be said to be without jurisdiction and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have and a mere wrong exercise of jurisdiction does not result in a nullity. It was further held that the lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the Executing Court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an Executing Court cannot go behind the decree must prevail. It was further held by the Hon'ble Supreme Court that there is a distinction between mere administrative orders and the decrees of Courts, especially a superior Court. It was further held that the order of a superior Court

such as the High Court, must always be obeyed no matter what flaws it may be thought to contain.

Keeping in view the law laid down by the Hon'ble Supreme Court in the aforementioned authorities and keeping in view the facts and circumstances of the present case, in my opinion, it would be clear that the present suit (plaint) filed by the plaintiff was an abuse of the process of law and is liable to be quashed by this Court, by exercising suo motu powers under Article 227 of the Constitution of India. As referred to above, in the previous litigation between the parties, a decree for possession on the basis of the title was passed in favour of present defendant No.1 by the trial Court, vide judgment and decree dated 15.3.1996. The said decree was upheld in appeal by the learned District Judge, by this Court and also by the Hon'ble Supreme Court, vide judgments/orders and decrees dated 2.8.1999, 30.8.2003 and 26.3.2004. It was thereafter that the present plaintiff, who was the defendant in the previous suit, filed the present suit for declaration and injunction seeking to get the aforesaid judgments/orders and decrees in the previous suit to be declared illegal and void and restraining the present defendants from executing the said decrees which were passed in their favour. When the present plaintiff was dispossessed from the suit property, in execution of the decree for possession passed in favour of present defendant No.1, the present plaintiff filed application under Order 6 Rule 17 C.P.C., seeking amendment of the plaint, so as to seek possession of the suit property from the present defendants on the ground that it was during the pendency of the suit that she was dispossessed and as such, was entitled to amend the plaint, so as to seek a decree for possession. In my opinion, as referred to above, the entire proceedings initiated by the

present plaintiff, from the date of the filing of the present suit, are abuse of the process of law, especially when the present plaintiff had lost upto Hon'ble Supreme Court and thereafter, she started a fresh round of litigation by filing the present suit seeking to get the various judgments/orders and decrees passed by various Courts, including this Court and the Hon'ble Supreme Court, to be declared illegal and void. In my opinion, this would not be permissible and the suit is liable to be quashed.

For the reasons recorded above, while dismissing the present petition under Article 227 of the Constitution of India filed by the plaintiff – petitioner against the order dated 3.8.2005 passed by the trial Court, I quash the suit (plaint) filed by the present plaintiff, namely Smt. Sharda, bearing Civil Suit No. 19/1 of 2004 titled Smt. Sharda Vs. Smt. Shangri etc. pending in the Court of Civil Judge (Junior Division) Jubbal, being an abuse of the process of law, exercising the suo motu power under Article 227 of the Constitution of India. There shall be no order as to costs.

(V.M. Jain),
Judge

December 20, 2005
(BSS)